

Application No.: 10/784,628

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCON IV

#### REMARKS

The present communication is responsive to the office Action mailed November 14, 2008. A one-month extension of time extending the period of reply from February 14, 2008 up to and including March 16, 2009 is submitted herewith.

Claims 1, 3-18 and 20 were pending in the application. Claims 1, 4, and 5 have been amended herein. Claims 3, 8, 12-18 and 20 have been cancelled and no claims have been added herein. Therefore, claims 1, 3-7 and 9-11 remain pending in the present application. Support for the amended claims can be found in Applicants' originally filed disclosure in at least paragraphs [0112]-[0121]. No new matter has been added. Applicants set forth remarks relating to the Action below.

In the Action, the Examiner rejected claims 1, 3, 5-18 and 20 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,195,380 to *Bicks* ("Bicks"), and claim 4 under 35 U.S.C. 103(a) as being unpatentable over Bicks.

The Examiner asserted that Bicks discloses an apparatus for engagement with an orthopedic device in Fig. 4. Tool 11, shown in Fig. 4, in Bicks is used to hold fuse 16. Fuse 16 is shown as a circular member that is mounted to curved portions of clip holder 17. There is nothing in the specification of Bicks that discloses or suggests that fuse 16 has a first and second member each with three confronting surfaces that are angled to one another let alone first and second baseplates of an orthopedic device having such features. Further, tool 11 seems to at most have one set of three forward surfaces to engage circular fuse 16.

Applicants respectfully assert that amended claim 1 includes several limitations that are not disclosed or suggested in Bicks. Applicants assert that amended claim 1 is not anticipated by Bicks because the cited reference does not

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disclose or suggest an orthopedic device having first and second baseplates each having first, second and third confronting surfaces that are angled with respect to one another. Further, Bicks does not disclose or suggest an apparatus including at least one shaft having a longitudinal axis and a shaft distal end having a top and bottom set of first, second and third forward surfaces angled with respect to one another for engagement with the confronting surfaces of the baseplates.

For the foregoing reasons, Applicants respectfully assert that amended independent claim 1 is unanticipated by Bicks. Claims 3, 5-7 and 9-11 are unanticipated, *inter alia*, their dependence from an unanticipated base claim. Claim 4 is nonobvious in view of Bicks because a *prima facie* case of obviousness cannot be made using Bicks alone. Therefore, Applicants respectfully assert claims 1, 3-7 and 9-11 are in condition for allowance and the Examiner should pass the case to issue.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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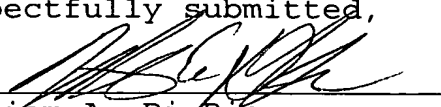
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 13, 2009

Respectfully submitted,

By

  
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